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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

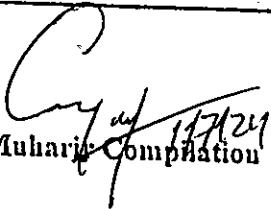
EXECUTION NO _____

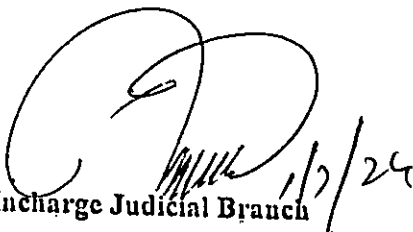
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Arshad Khan vs Police Department

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Total Pages in Part-A	0	52
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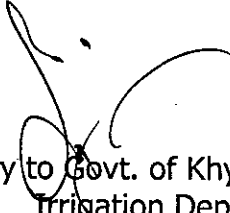

Muharib Complainant


Incharge Judicial Branch

Grounds: -

- A. Incorrect. The promotion order dated 26.08.2022 is legal in accordance with law and has been issued in light of directions of Service Tribunal dated 15.04.2022 by convening meeting of the Departmental Promotion Committee.
- B. Para-B is Incorrect as explained in Para-A above.
- C. Para-C is Incorrect as explained in Para-A above.
- D. Para-D is Incorrect as explained in Para-A above.
- E. Para-E is Incorrect as explained in Para-A above.
- F. Para-F is Incorrect as explained in Para-A above.
- G. Pertains to record.
- H. That the respondents also seek permission of this Hon'ble Tribunal to raise further points at the time of arguments.

It is, therefore requested that the appeal being devoid of merits may be dismissed with cost, please.


Secretary to Govt. of Khyber Pakhtunkhwa,
Irrigation Department
Respondent No. 01 to 04

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SCANNED
11/01/2024
PESHAWAR

APPEAL NO	INSTITUTION	ORIGINAL INSTITUTION	DECISION	PAGES
1056/2023	-	08.05.2023	04.04.2024	52

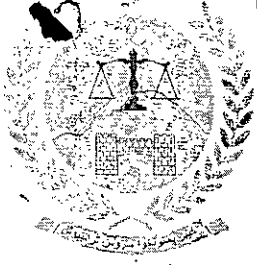
ARSHAD KHAN VS POLICE DEPARTMENT

Sr.No.	Page No.	No. of Pages	Documents
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Total Pages in Part-A	46
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Muharir
Muharir Compilation

[Signature]
Incharge Judicial Branch



①

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

No. 1041 /ST Dated 2 / 5 /2024

To

The District Police Officer,
District Bannu.

Subject

JUDGMENT IN SERVICE APPEAL NO. 1056/2023 TITLED
ARSHAD KHAN -VERSUS- THE INSPECTOR GENERAL OF
POLICE DEPARTMENT, KHYBER PAKHTUNKHWA, PESHAWAR
AND OTHERS

Dear Sir,

I am directed to forward herewith a certified copy of judgment dated: 04.04.2024, passed by this Tribunal in the above mentioned service appeal for compliance.

Encl. As above.

(PIR MUHAMMAD KHAN AFRIDI)

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1056/2023

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Arshad Khan Ex-PASI, I/C Traffic, District Bannu.

..... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Bannu region Bannu.
3. The District Police Officer, Bannu.

..... (Respondents)

Syed Noman Ali Bukhari
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....08.05.2023
 Date of Hearing.....04.04.2024
 Date of Decision.....04.04.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“That on the acceptance of this appeal, the order dated 14.02.2023 and 12.04.2023 may kindly be set-aside and the appellant may be reinstated in to service with all back and consequential benefits. Any other remedy which this august tribunal deems fit and appropriate that may also be awarded in favor of appellant.”

RECEIVED
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

2. Brief facts of the instant case are that appellant was serving as Probation Assistant Sub Inspector in the Police Department; that while serving, he was issued charge sheet dated 22.11.2022 regarding contacts with notorious persons and leakage of secret information; that the said charge sheet was replied by the appellant, denying the charges; that an inquiry was initiated against the appellant which resulted into the punishment of dismissal from service, vide impugned order dated 14.02.2023; that feeling aggrieved, he filed departmental appeal, which was rejected, hence, the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments. We have heard learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued that the impugned order was against law, facts and norms of natural justice; that copies inquiry report and show cause notice were not provided to the appellant which shows that proper inquiry had not been conducted; that the inquiry proceedings show that the department had already decided to dismiss the appellant, and he had not been treated fairly; that the appellant had not been heard which was the violation of Article-10A of the Constitution of Pakistan, 1973; that the appellant was deprived of his right of defence by not giving chance of personal hearing and opportunity to cross-examine the witnesses; that the impugned order was also against the Articles 2-A, 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the report of CDR (Call Data Record) was just for showing date and the time of dialed, missed and received calls which was made as based for the dismissal of the appellant and the said act



was against the law; that the appellant's family had given several sacrifices for the Police Department and could not think about contacts with notorious elements. Therefore, he requested for acceptance of the instant service appeal.

5. As against that, District Attorney argued that the impugned order was according to law, facts and norms of principle of justice; that the inquiry report, charge sheet and statement of allegation had been served upon the appellant; that the appellant was failed to rebut the allegations and the impugned order was quite legal and had been issued according to law; that the appellant had been given opportunity of defense but failed to prove his innocence; that the appellant had contacted the notorious care lifter as was evident from the CDR that the appellant had contacts with the said person; that the impugned order was in accordance with law rules and policy and the appellant had been granted full opportunity of defense in shape of cross-examination, charge sheet and statement of allegations. Therefore, learned District Attorney requested for acceptance of the instant service appeal.

6. Perusal of record reveals that appellant has joined the police department as constable in the year 2006 and was absorbed as PASI in the year 2016 against the Shuhada Quota. The appellant has passed Basic Elite Course, Traffic course, 08 promotional courses and earned 17 CC-III and 02 CC-II in recognition of his good performance. Appellant was served with charge sheet vide DPO Office Endst; No.445/SRC, dated 22.11.2022, wherein, charges of contacts with notorious person (Sakhat) coupled with leaking out information to him about the movement of arresting party to avoid his arrest as well as conveying pictures of police officials were leveled. The appellant properly replied to charge sheet and rebutted the allegations. Inquiry officer based his findings only on collection of CDR of

(Sakhat), and ignored the statement of SHO town which means that the inquiry officer a predetermined mind to remove the appellant. The competent authority (DPO Bannu) awarded the impugned punishment vide order dated 14.02.2023 on the basis of findings, without issuing final show cause notice and had also not provided inquiry report to the appellant.

7. Perusal of inquiry report reveals that entire emphasis of the inquiry officer is upon the CDR data, and he held the appellant liable for misconduct as appellant had allegedly contacted notorious international car lifter Sakhim ullah Alias Sakhat and send video of ASI Khalid, who was deputed for arrest of Sakhat.

8. Respondent, were asked to produced that CDR data & picture of video call, but they could not produce any such record rather they proclaimed show cause notice No.30 dated 26.02.2024 issued to Senior Clerk Muhammad Younas, ASI Ijaz Khan, Reader SP City and ASI Noor DALI Incharge Foji Missal Branch, on the allegation of missing of CDR data of the Sakhat from Foji Missal. Moreover, the interesting factor is that Muhammad Younas Khan in his reply to show cause dated 03.04.2024 had specifically mentioned that inquiry officer had not annexed CDR data along with inquiry file. The relevant portion of reply is as under;

عائد شدہ الزام کے بارے میں CDR اور ویڈیو کال کے متعلق ثبوت انکوائری فائل میں رہے ہیں اور نہ ہی معروض خدمت ہوں۔ کہ شامل کیے ہیں۔ انکوائری رپورٹ ہمراہ لف ہے۔ الزام بے بنیاد ہے نہ ہی انکوائری فائل انٹیکس پر موجود ہے اور نہ کہ سائل کو کسی نے حوالہ کیا ہے۔ اور نہ کہ انکوائری آفیسر نے شامل تفتیش کیا ہے۔


This reply of the Mr. Muhammad Younas was agreed by the District Police Officer which means that there was no such data is available on inquiry file. When same was not available in inquiry file and was not confronted to the appellant by the inquiry officer providing a chance of its rebuttal, then in such a situation to

held equality, appellant on this score is un-justice, because no chance of defense was provided to appellant which is essential requirement of fair trial.

9. It is also pertinent to mention here that appellant was not provided with inquiry report and inquiry record. Beside no final show cause notice was issued to the appellant by authority which is also suggestive of the fact that no CDR data was available with inquiry officer, which can be given and confronted to the appellant by the authority. So, appellant was penalized on the basis of record which was not in existence and he was condemned unheard.

10. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of *audi alteram partem* was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD

SC 483.




11. Appellant admitted contact with Sakhat for the purpose of his arrest and even the death of Sakhat, was result of information which I had given to SHO which fact was confirmed by the Raza Khan SHO township in his statement recorded before the inquiry officer but said fact was ignored by inquiry officer.

12. For what has been discussed above, we are unison to accept appeal in hand. Costs shall follow the event. Consign.

13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of April, 2024.*

SCANNED
KPST
PESHAWAR


(Kalim Arshad Khan)
Chairman

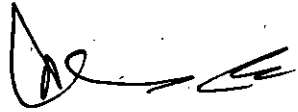

(Rashida Bano)
Member (J)

*M.Khan

ORDER

04.04.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to accept appeal in hand. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of April, 2024.*



(Kalim Arshad Khan)
Chairman

*M.Khan



(Rashida Bano)
Member (J)

SCANNED
BY
PESHAWAR

01.03.2024 1. Appellant present in person. Mr. Muhammad Jan District Attorney alongwith Sajjad, Inspector (Legal) for the respondents present.

2. Representative of the respondents is again directed to submit complete enquiry file alongwith allied documents as per previous order sheet before the next date positively To come up for arguments on 11.03.2024 before D.B. P.P given to the parties.

SCANNED
KPSF
Peshawar

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

Fazle Subhan, P.S

11.03.2024 1. Learned counsel for the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Sajjad Ahmad, Inspector (Legal) for the respondents present.

2. Record mentioned vide order sheet dated 19.02.2024 not submitted, therefore, the District Police Officer, Bannu is directed to appear in person alongwith record. Adjourned. To come up for record and arguments 04.04.2024 before the D.B. PP given to the parties.

SCANNED
KPSF
Peshawar

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)


Kaleemulla

13th Feb, 2024

Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Learned Member (Executive) Miss. Fareeha Paul is on leave, therefore, bench is incomplete. To come up for consideration and order on 19.02.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Salah-ud-Din)
Member (J)


Naeem Amin

19.02.2024

Appellant alongwith clerk of his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

During perusal of the case file, it transpired that the respondents in Para-J of their comments have mentioned that copy of CDR and video call photos are annexed with the comments, however the same have not been found annexed with the reply. Learned Deputy District Attorney shall intimate the respondents to produce complete inquiry record including copy of CDR as well as video call photos and to come up for arguments on 01.03.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)


(Salah-Ud-Din)
Member (J)


Naeem Amin


25.01.2024

Appellant alongwith his counsel present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Arguments heard. To come up for consideration and order on 30.01.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)


Naeem Amin

30.01.2024

Appellant alongwith his counsel present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Learned Member (Executive) Miss Fareeha Paul is on leave, therefore, bench is incomplete. To come up for consideration and order on 13.02.2024 before the D.B. PP given to the parties.

SCANNED
KPST
Peshawar



(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S

15.09.2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan learned Assistant Advocate General for respondents present.

2. Written reply on behalf of respondents submitted which is placed on filed. A copy of the same is handed over to learned counsel for the appellant. To come up for arguments on 07.12.2023 before D.B. P.P given to parties.



(Rashida Bano)
Member (J)


KaleemUllah

07th Dec. 2023

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant seeks some time for preparation of arguments. To come up for arguments on 29.03.2024 before the D.B. Parcha Peshi given to the parties.


(Salah-ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

Naeem Amin

SCANNED
KPST
Peshawar

SCANNED
KPST
Peshawar

22.06.2023

Clerk of learned counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant is busy in Service Tribunal at Camp Court Abbottabad. Adjourned. To come up for preliminary hearing on 15.08.2023 before the S.B. Parcha Peshi given to clerk of learned counsel for the appellant.

SCANNED
KPST
Peshawar

Naeem Amin

(Salah-Ud-Din)
Member (J)

15.08.2023

Learned counsel for the appellant present and argued that vide impugned order dated 14.02.2023 appellant was dismissed from service illegally without providing chance of fair trial and self defence, against which departmental appeal was filed by the appellant on 03.03.2023 which was rejected on 12.04.2023, therefore, instant service appeal filed on 08.05.2023 under Section 4 of Khyber Pakhtunkhwa Service Act 1974. Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security fee within 10 days. Thereafter, notices be issued to respondents for submission of written reply/comments. Respondents be summoned through TCS the expenses of which be deposited by the appellant within 3 days. Adjourned. To come up for written reply/comments on 15.09.2023 before S.B. P.P given to learned counsel for the appellant.

SCANNED
KPST
Peshawar

KaleemUllah

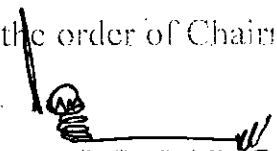

(Rashida Bano)
Member (J)

FORM OF ORDER SHEET

14

Court of _____

Case No.- 1056/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/05/2023	<p>The appeal of Mr. Arshad Khan presented today by Syed Noman Ali Bukhari Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 15-05-23.</p> <p>By the order of Chairman</p> <p style="text-align: center;">  REGISTRAR </p> <p>Learned counsel for the appellant present and requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for preliminary hearing on 22.06.2023 before S.B. Parcha Peshi given to the appellant.</p> <p style="text-align: right;">  (Muhammad Akbar Khan) Member (E) </p>

SCANNED
KPST
Peshawar

SCANNED
KPST
Peshawar

15.05.2023

Kamranullah

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECKLIST

Case Title: Arshad Khan vs Police Deptt

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Syed A. Jaman Ali Bukhari</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.	Whether Appeal is within time?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4.	Whether the enactment under which the appeal is filed mentioned?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.	Whether the enactment under which the appeal is filed is correct?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.	Whether affidavit is appended?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.	Whether affidavit is duly attested by competent oath commissioner?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8.	Whether appeal/annexures are properly paged?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10.	Whether annexures are legible?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11.	Whether annexures are attested?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12.	Whether copies of annexures are readable/clear?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13.	Whether copy of appeal is delivered to A.G/D.A.G?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15.	Whether numbers of referred cases given are correct?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16.	Whether appeal contains cuttings/overwriting?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17.	Whether list of books has been provided at the end of the appeal?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18.	Whether case relate to this Court?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19.	Whether requisite number of spare copies attached?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20.	Whether complete spare copy is filed in separate file cover?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21.	Whether addresses of parties given are complete?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
22.	Whether index filed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
23.	Whether index is correct?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
24.	Whether Security and Process Fee deposited? on	<input checked="" type="checkbox"/>	<input type="checkbox"/>
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on	<input type="checkbox"/>	<input type="checkbox"/>
26.	Whether copies of comments/reply/rejoinder submitted? on	<input type="checkbox"/>	<input type="checkbox"/>
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on	<input type="checkbox"/>	<input type="checkbox"/>

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Syed A. Jaman Ali Bukhari
Signature: [Signature]
Dated: 8/5/23

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BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1056 /2023

SCANNED
KPST
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ARSHAD KHAN

V/S

Police Deptt:

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5.	Copy of impugned order	D	15
6.	Copy of departmental appeal	E	16-17
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Arshad
APPELLANT
ARSHAD KHAN

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT.

(17)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

(1)

APPEAL NO. 1056 /2023

Arshad Khan Ex-PASI
I/C Traffic District Bannu.

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 5187
Dated 8/5/2023

.....(Appellant)

VERSUS

1. The Inspector General of Police, KP, Peshawar.
2. The Regional Police Officer Bannu region Bannu.
3. The District Police Officer Bannu.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KP SERVICES TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 14-02-2023 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE ILLEGALLY WITHOUT LAWFUL AUTHORITY AND WITHOUT JURISDICTION AND AGAINST THE REJECTION ORDER DATED 12-04-2023 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED WITHOUT SHOWING ANY COGENT REASON.

Filed in-day
08/08/2023

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 14/02/2023 AND 12-04-2023 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

- ✓ 1. That the appellant has joined the police department as constable in the year 2006 and absorbed as PASI in the year 2016 against the Shuhadas Quota. The work with full zeal and zest. the appellant has passed Basic Elite Course, Traffic course, 08 promotional courses and earned 17 CC-III and 02 CC-II in recognition of his good performance.
2. That During the entire service, the appellant has not given an iota of chance of complaint to his high-ups. but unfortunately, the appellant was served with charge sheet vide DPO Office Endst; No. 445/SRC, dated 22.11.2022, wherein, the so-called charges of contacts with notorious person (Sakhat) coupled with leaking out information to him about the movement of arresting party to avoid his arrest as well as conveying pictures of police officials were leveled. The appellant properly replied to charge sheet and rebutted the allegation with cogent proof. Copy of charge sheet and reply are attached as annexure- A & B.
3. That during the inquiry proceeding, the appellant rebutted each and every charges on plausible grounds but inquiry officer based his findings only on collection of CDR of (Sakhat) and also ignored the statement of SHO Town which means that the inquiry officer made his mind to remove the appellant. **Copy of the inquiry report is attached as annexure-C.**
4. That on the basis of that findings, without issuing final show cause notice and also not providing of inquiry report to the appellant the competent authority (DPO Bannu) awarded the impugned punishment vide order dated 14-02-2023, without using independent mind which is discriminatory, against the law and justice. Copy of impugned order is attached as annexure-D.
5. That the appellant feeling aggrieved filed departmental appeal against the impugned order which was rejected without showing any cogent reason vide order dated 12.04.2023. Hence the present appeal on the following grounds amongst other. **Copy of departmental appeal and rejection order is attached as annexure-E & F.**

GROUNDS:

- A. That the appellant the impugned order dated 14/02/2023 and 12/04/2023 is against the law, norms of justices and without lawful authority. Hence liable to be set-aside.
- B. That the inquiry report and show cause was also not provided to the appellant, which is clear violation of Superior Court judgment. That principal is also held in the appeal of the **Waleed Mehmood vs Police Deptt and Zeeshan vs police**, so the impugned order was passed in violation of law and rules and norms of justice. The same principle held in the Superior Court judgments cited as 1981 PLD SC 176 and 1987 SCMR 1562, without which all the proceedings is nullity in the eyes of law. Reliance was placed on **2018 PLC (CS) 997 and 2019 SCMR 640**.
- C. That no proper and regular inquiry was conducted. Neither any documents or report was provided to appellant for examination nor any statement of witnesses recorded in the presence of appellant. Even a chance of cross examination was also not provided to the appellant which is violation of norms of justice.
- D. That vide impugned order dated 14-02-2023, the penalty of dismissal from service was imposed on the appellant under Police Rules 1975 without using independent mind. The appellant feeling aggrieved filed departmental appeal, which was also rejected on dated 12/4/2023 for no good ground and without applying independent mind. which practice is quite incorrect and turned down by the apex court in a latest judgment contained in 2020 PLC (CS) 1291.
- E. That the attitude and conduct of the Department shows that they were bent upon to remove the appellant at any cost.
- F. That there is no chance of self-defense was provide to the appellant and according to Supreme Court judgment mere on the basis of allegation no one should be punished.
- G. That it is the maxim of the law (audi alteram peltrum) that no one should be unheard, and the impugned order is also passed in violation of article of 10-A OF the constitution of Pakistan which told us about the fair trial which was the fundamental right of the appellant but denied to the appellant. So the impugned order is not tenable in the eye of law.

- H. That the appellant was deprived of his inalienable right of personal hearing and opportunity to cross examine witnesses. The opportunity of offering proper defense was snatched from the appellant. The Hon'able Service Tribunal has been consistently following this yardstick almost in all cases, so departure from the set pattern and that too without any cogent reason in the present case would cause irreparable damage to the appellant at the cost of substantial justice. Such inquiry proceeding could not be termed as fair, just and reasonable, as the respondents badly failed to prove that the appellant has leaked certain official information to the criminals. such practice has already been disapproved by the apex court contained in its judgments PLD 1989 SC 335, 1996 SCMR 802, 2018 PLC (CS)997 and 2019 SCMR 640.
- I. That the impugned order is against the articles 2A , 4, and 25 , of the constitution of Pakistan 1973.
- J. That the appellant has remained Incharge DSB and the job of intelligent officer is to collect information from whatever source may be, deemed appropriate to protect the interest of state as well as department. The appellant has explained this fact in his reply to the charge sheet too duly testified by SHO PS Township in his statement, recorded by Enquiry Officer. It was the outcome of information (collected by the appellant as a result of the said contacts) which made ensured the successful action on dated 12.10.2023. If these contacts were not utilized, the nabbing of accused (notorious person Sakhat) could not be ensured. The purpose intent of the appellant behind the call contacts with the accused Sakhat was not to protect him but to was trace his whereabouts as well as arrest him. The appellant could explain in personal hearing (in one to one) that who were trying to protect him as well as paving way for release even his arrest. the appellant have never committed any act or omission with bad or malafide intentions which could be termed as misconduct, albeit the appellant was dismissed from the service. Which is violation of reported judgment cited as 1997 PLC cs 564.
- K. That the report of CDR is limited only to show the time, date and period of dialed, missed and received call and could not certify the nature of conversation and message etc that whether it were made for the interest of department of favoured the accused person. In the case of the appellant, Star witness, SHO PS Township, has affirmed the facts that the appellant has provided valuable information regarding the arrest of notorious person

Sakhat which is sufficient to negate the negative aspects of his contacts with the above accused.

- L. That it was the fundamental right of the appellant to cross examine the person(evidence) who had provided the Call Data Record to Enquiry Officer but this opportunity was not provided, hence the call data record could not be held a gospel truth.
- M. That the appellant has been discriminated because number of police officers/officials contacts were identified with accused Sakhat after taking into custody his mobile phone followed by examining his CDR but only the appellant was made ascapegoat and the others were either absolved from the charges or awarded only minor punishment despite the fact that the appellant contacts with the accused were only for the purpose of his arrest but the good performance of the appellant was rewarded in shape of dismissal.
- N. That the appellant was required to give an opportunity of showing cause of the proposed action which was to be taken by the competent authority but this opportunity was not afforded to the appellant which is mandatory under police rules and other laid down rules. Thus, the appellant was condemned as unheard by violating the due process of law at every stage of the inquiry proceedings.
- O. That according to Federal Shariyat court Judgment cited as ***PLD 1989 FSC 39*** the show cause notice is must before taking any adverse action, non-issuance of show cause notice is against the injunction of Islam. Hence the impugned order is liable to be set-aside.
- P. That the show cause is the demand of natural justice and also necessary for fair trial and also necessary in light of injunction of Quran and Sunnah but show cause was not given to the appellant. So, fair trail denied to the appellant which is also violation of Article 10-A of the constitution. Further it is added that according to reported judgment cited as ***1997 PLD page 617*** stated that every action against natural justice treated to be void and unlawful. Hence impugned order is liable to be set-aside. The natural justice should be considered as part and parcel of every statute according to superior court judgment cited as **2017 PLD 173 and 1990 PLC cs 727.**

- Q. That the appellant and his family members have given matchless sacrifices for the department/state by offering precious lives in shape of Shahadat. A person with a prudent mind could not expect of such act from a police officer whose family members have given shahdaths for saving the image of the department. Thus, the appellant having such family background even could not think about saving the skin of suchlike notorious accused.
- R. That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Arshad Khan
APPELLANT
ARSHAD KHAN

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT.

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. _____/2023

ARSHAD KHAN

V/S

Police Deptt:

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

DEPONENT

LIT OF BOOKS:

- 1. Constitution of the Islamic Republic of Pakistan, 1973.
- 2. The Police rules 1975.
- 3. Any other case law as per need.

Arshad Khan
APPELLANT
ARSHAD KHAN

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT
PESHAWAR

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BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

S.A NO. _____ /2023

ARSHAD KHAN

V/S

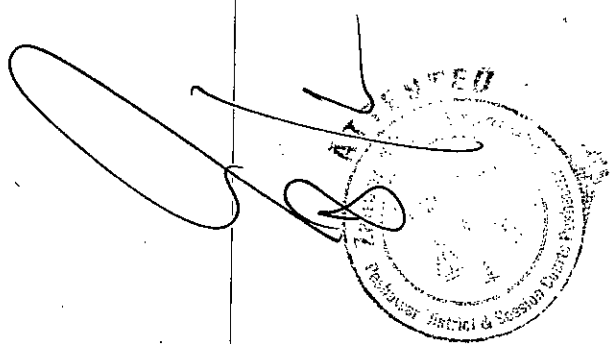
Police Deptt:

AFFIDAVIT

I, ARSHAD KHAN (Appellant), do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.

DEPONENT

ARSHAD KHAN



CHARGE SHEET:

(25) A 9
I, Dr. MUHAMMAD IQBAL, District Police Officer, Bannu, as competent authority, hereby charge you, PASI Arshad Khan I/C Traffic for the purpose of departmental enquiry proceedings as follows:

- That as per technical analysis of cell phone recovered from notorious car lifter sakhat it was found that you were in contact with him.
- You also send pictures of police officials to him whom were tasked to track Sakhat. Beside during all time when teams were after the arrest of sakhat, you leaked official information to him to avoid his arrest.
- Such an act on your part is against service discipline and amounts to gross misconduct in official duty.

1. By reason of the above you appear to be guilty of misconduct under the Police Rules 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014) and have rendered yourself liable to all or any of the penalties specified in the said rules.

2. You are therefore, directed to submit your defense within 07 days of the receipt of this Charge Sheet to the enquiry officer.

3. Your written defense, if any, should reach to the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

4. You are directed to intimate whether you desire to be heard in person.

5. A statement of allegation is enclosed.

(Dr. MUHAMMAD IQBAL)PSP
District Police officer,
Bannu

A

Better copy
Page 9

CHARGE SHEET:

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4. You are directed to intimate whether you desire to be heard in person.

5. A statement of allegation is enclosed.

ATTESTED

عنوان: جواب بحوالہ چارج شیٹ نمبر SRC/445 مورخہ مورخہ 22.11.2022 مجاریہ جناب ڈسٹرکٹ پولیس آفیسر بنوں

جناب عالی!

معروض خدمت ہوں کہ من سائل کو جناب ڈسٹرکٹ پولیس آفیسر صاحب نے چارج شیٹ کیا ہے اور آپ جناب

Add: SP صاحب کو میرا انکوائری آفیسر مقرر کیا ہے۔ مجھے پر الزامات ہیں کہ

- That as per technical analysis of cell phone recovered from notorious car lifter Sakhat, it was found that you were in contact with him.
- You also end pictures of police officials to him whom were tasked to trace Sakhat. Beside during all time when teams were after the arrest of Sakhat, you leaked official information to him to avoid his arrest.
- Such an act on your part is against service discipline and amounts to gross misconduct in official duty.

عالیجاہ!

جہاں تک پہلا الزام ہے یہ بالکل حقیقت پر مبنی ہے اور میرا رابطہ کار لفٹر سخت کی لوکیشن معلوم کر کے اس کے خلاف کارروائی کرنا

مقصود تھی۔ مورخہ 22.10.2022 کی کارروائی بحوالہ مقدمہ نمبر 806 میری ہی انفارمیشن پر ہوئی ہے میں خود وہاں پر موجود تھا

اور SHO تھانہ ٹاؤن شپ کیساتھ مسلسل رابطے میں رہا۔ SHO تھانہ ٹاؤن شپ حقیقت سے مکمل طور پر آگاہ ہیں۔

جہاں تک دوسرا الزام ہے میں خدا کو حاضر و ناظر جان کر خلفاً بیان دیتا ہوں کہ میں نے کسی پولیس اہلکار کی تصویر شیئر نہیں کی ہے اور

نہ ہی ایسا کوئی ثبوت میرے خلاف موجود ہے۔ اگر میں سرکاری انفارمیشن لیک کرتا تو مورخہ 12.10.2022 کی کارروائی کی

انفارمیشن نہ کرتا۔ تاہم آفسران بالا کے سامنے پیش ہو کر ساری حقائق بتا سکتا ہوں۔

مجھے ذاتی طور پر بھی سننے کا موقع دیا جائے تاکہ آفسران بالا کو مطمئن کر سکوں اور جرح کا موقع بھی دیا جائے۔ اپنی ساری نوکری ہمیشہ

دیانتداری اور ایمانداری کے ساتھ سرانجام دی ہے اور کبھی بھی آفسران بالا کو شکایت کا موقع نہیں دیا ہے۔

لہذا اب مزید کارروائی چارج شیٹ داخل دفتر فرمائی جائے۔

ارشاد خان PASI متعینہ انچارج ٹریفک II

ATTESTED



OFFICE OF THE
ADDITIONAL SUPERINTENDENT OF POLICE
BANNU

No. 287 / Add:SP

(28)

Dated 30 / 12 / 2022

(U)

To: **The District Police Officer,
Bannu**

Subject: **DEPARTMENTAL PROCEEDINGS AGAINST PASI ARSHAD
KHAN I/C TRAFFIC**

Memo:

Kindly refer to DPO office endorsement No. 445/SRC, dated 22.11.2022, on the subject noted above.

Respected Sir,

As per your kind order, the enquiry against the above-named police official was completed by the undersigned. Its step-wise detail is as under:

ALLEGATIONS AGAINST PASI ARSHAD KHAN I/C TRAFFIC :

- That as per technical analysis of cell phone recovered from notorious car lifter Sakhat it was found that you were in contact with him.
- You also send pictures of police officials to him whom were tasked to trace Sakhat. Beside during all time when teams were after the arrest of Sakhat, you leaked official information to him to avoid his arrest.
- Such an act on your part is against service discipline and amounts to gross misconduct in official duty.

PROCEEDINGS:

For the purpose of scrutinizing the conduct of PASI Arshad Khan with reference to the above allegations, charge sheet and statement of allegations were served upon him; he submitted his written reply. He was heard at length, too. Some questions were also asked from him which he replied and were brought into writing. He was also shown the hard-copy of CDR of notorious car-lifter Sakhat and photos of Khalid Khan ASI (ex-Incharge DSB) sent to Sakhat by the accused Arshad Khan via video call link. ASI Khalid who is now in Canada on visit visa was also contacted through cell-phone and his stance was taken.

FACTS ABOUT SAKHAT:

Sakhim Ullah alias Sakhat S/O Zahir Khan r/o Kam Tarkhoba Asperka PS Domel was the ringleader of interprovincial car-lifter-groups. The KP government has also announced head-money for his killing. He was killed in an encounter vide FIR No. 806, dated 12.10.2022, U/S 302-324-353/15AA/5-EXP-Acu/427 PPC, PS Domel. He was a desperate contract killer and was wanted to police in the following 16 cases:

ATTESTED

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1. FIR No. 119/2019 u/s 15 AA PS Domel.
2. FIR No. 371/2019 u/s 400/401 PS Domel.
3. FIR No. 621/2019 u/s 411/34 PR PS Domel.
4. FIR No. 659/2019 u/s 411 PR PS Domel.
3. FIR No. 614/2021 u/s 15-AA PS Domel.
6. FIR No. 679/2022 u/s 400/401-M PS Domel.
7. FIR No. 531/2019 u/s 381-A PS City (Karak).
8. FIR No. 613/2019 u/s 468-471 M PS Ghoriwala
9. FIR No. 1157/2019 u/s 381-M PS Civil Line (Faisalabad).
10. FIR No. 1578/2019 u/s 381 PPC PS City Hannu.
11. FIR No. 100/2022 u/s 381/411 PS Mirakhel (Hannu).
12. FIR No. 211/2020 u/s 381-A PR PS Miryan (Hannu).
13. FIR No. 695/2020 u/s 381-A PS Busia khel (Hannu).
14. FIR No. 576/2020 u/s 400/401 PR PS Naurang (Fakkimarwal).
15. FIR No. 1034/2020 u/s 381-A PR PS Akora Khattak (Nowshetra) and
16. FIR No. 299/2020 u/s 381-A PS Cantt (Peshawar)

CDR AND PICTURES UNDER-QUESTION:

After killing of notorious car-lifter, Sakhat, vide case FIR No. 516 dated 12.10.2022, U/S 302-324-353/15AA/5-EXP-Act 427 PPC, PS Domel, his mobile phone was sent to lab for technical analysis and inter alia found that PASI Arshad Khan via video link had sent the video of Khalid Khan ASI to Sakhat with sinister intrigues and mala fide intention from his own cell phone bearing SIM No. 0334-8845429. This SIM has been issued in the name of PASI Arshad Khan. Moreover, a WhatsApp chatting from this number with Sakhat has also been proved. The objectionable screen-shot obtained from the cell phone of Sakhat shows the picture of Khalid Khan ASI at the center and that of Sakhat at the upper corner. This screen-shot has been taken from the video call sent to Sakhat by PASI Arshad Khan on 12 October 2022 at 12:02 pm, few hours before the death of Sakhat.

STATEMENT OF PASI ARSHAD KHAN:

جواباً:
 جہاں تک پین انڈیا ہے یہ بالکل حقیقت پر مبنی ہے اور میرا رابطہ کارفرما کی لوکیشن معلوم کر کے اس کے خلاف کارروائی کرنے کا مقصد تھی۔ مورخہ 12.10.2022 کی کارروائی بحوالہ مقدمہ نمبر 806 میری ہی اطلاع میں ہوئی ہے میں خود وہاں پر موجود تھا اور نہیں آج دو تین دنوں شب کے ساتھ مسلسل رابطے میں رہا اس کے بعد دو تین دنوں شب حقیقت سے مکمل طور پر آگاہ تھا۔

ATTESTED

جس تک دور انڈیا سے میں خود کو حاضری بنا کر جان کر خانہ بانیان دیتا ہوں کہ میں نے کسی پولیس اہلکار کی تصویر نہیں لی ہے۔ اور یہی ایسا کوئی ثبوت میرے خلاف موجود ہے۔ اگر میں سرکاری انفارمیشن ایکسپلوریشن ایکٹ 2017 کی کارروائی کی انفارمیشن نہ کرتا، تو جہم آفسران بالا کے سامنے پیش ہو کر ساری حقائق بتا سکتا ہوں۔

مجھے ذہنی طور پر بھی سنے کا موقع دیا جائے تاکہ آفسران بالا کو مطمئن کر سکوں اور جرح کا موقع بھی دیا جائے۔ اپنی ساری ذہنی بیوش دیا ہندواری کے ساتھ سرانجام دی ہے اور کبھی بھی آفسران بالا کو شکایت کا موقع نہیں دیا ہے۔

بذیاد مزید کارروائی چارج شیٹ داخل دفتر فرمائی جائے۔

In reply to a cross question accused PASI Arshad Khan stated that his contact with Sakhat was only for trapping him for his arrest and he had given all information to SHO PS Township Mr. Raza Khan. He may be asked in this regard.

STATEMENT OF SHO PS TOWNSHIP, RAZA KHAN:

SHO Raza Khan was contacted on phone and found in Islamabad. In reply to my question whether PASI Arshad Khan had given him any information regarding Sakhat, he replied, "yes, of course. I have recovered a stolen car from the abode of Sakhat on the tip off of Arshad Khan. Even at the day on occurrence (death of Sakhat) Arshad Khan had informed me to remain at high alert about the imminent occurrence."

FINDINGS:

1. The allegations leveled against PASI Arshad Khan are based on forensic science and are undeniable.
 2. After the technical analyses of cell phone recovered from the notorious car-lifter Sakhat, it revealed that PASI Arshad Khan had contacted him (17) times on audio calls and Sakhat (9) times vice versa during the last 03 days before the death of Sakhat.
 3. Similarly, PASI Arshad Khan sent the video of ASI Khalid Khan (ex-incharge DSB) to Sakhat on 12.10.2022 at 12:02 hrs from his mobile phone SIM No. 0334-8845429. Khalid Khan had been deputed to trace out and arrest Sakhat.
 4. The forensic science has also proved that SIM No. 0334-8845429 has been issued and registered in the name of PASI Arshad Khan.
 5. Arshad Khan accepts all the contacts mentioned above with Sakhat except sending video of Khalid Khan which is unbelievable. It is a proverb that "Man can tell a lie but scientific evidence does not"
- Hence, it has been proved that PASI Arshad has shared the pictures of Khalid Khan with Sakhat with no good intension.

ATTESTED

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6. The claim of PASI Arshad Khan that he had contacted Sakhat to manage his arrest good cannot be relied upon as he had not taken into confidence his high ups neither he had shared valuable information with Worthy DPO who had constituted various teams entrusted with the task of arrest of Sakhat.

Moreover, sending the video/pictures of ASI Khalid Khan, a police official, to Sakhat, a notorious PO of 16 cases cannot be linked with good intention as Khalid Khan had been deputed for the arrest of Sakhat.

CONCLUSION:

Keeping the above facts and figures in view, all the allegations leveled against PASI Arshad Khan have been proved in toto with undeniable and irrefutable scientific evidences.

Submitted please.

*Additional Superintendent of Police,
Bannu*

~~ATTESTED~~

PUNISHMENT ORDER

D/ 32



This order of the undersigned will dispose of the departmental proceedings against accused PASI Arshad Khan, under Police Rule 1975 (As amended vide Govt. of Khyber Pakhtunkhwa Gazette Notification of even No: dated 27th of August 2014) by issuing charge sheet and statement of allegations to him for committing the following commissions/omissions:-

➤ That as per technical analysis of cell phone recovered from notorious car lifter Sakhat it was found that PASI Arshad Khan was in contact with the said accused.

➤ He also send pictures of Police Officials to the accused whom were tasked to trace Sakhat. Beside during all time when teams were after the arrest of Sakhat, he leaked official information to him to avoid his arrest.

Charge sheet and statement of allegation were issued to him and Add/SP. Bannu was appointed as Enquiry Officer to hold a regular departmental enquiry under Police Rule 1975 (As amended vide Govt. of Khyber Pakhtunkhwa Gazette Notification of even No: dated 27th of August 2014). The Enquiry Officer submitted finding report vide letter No. 287/ASP, dated 30.12.2022 and reported in the light of departmental enquiry proceeding, all the allegations leveled against PASI Arshad Khan have been proved, placed at file.

He was also heard in person dated 13.02.2023 to prove himself innocence but he failed to do so.

Keeping in view of the above, the undersigned meticulously perused all the relevant record, enquiry report and other circumstances of the case come to the conclusion that allegations leveled against the said official have been proved. The undersigned agreed with the findings of the enquiry officer. Hence, I, Dr. Muhammad Iqbal, District Police Officer, Bannu, in exercise of the power vested in me under Police Rule 1975 (As amended vide Govt. of Khyber Pakhtunkhwa Gazette Notification of even No: dated 27th of August 2014) hereby awarded him Major Punishment of "Dismissal from Service" with immediate effect.

OB No. 183
Dated: 14 102/2023

(Dr. MUHAMMAD IQBAL)PSP
District Police Officer,
Bannu.
Tel: 0928-9270038
Fax :0928-9270045
Email: dpobannu2@gmail.com

No. 895 /SRC dated Bannu, the 14 12/2023.

Copy of above for necessary action to:

1. Reader, Pay Officer, SRC, OHC
2. Fauji Misal Clerk along with enquiry file for placing it in the Fauji Misal of the concerned official.

ATTESTED

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PUNISHMENT ORDER

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ATTESTED

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Bannu Region, Bannu.

Sub: DEPARTMENTAL APPEAL FOR SETTING ASIDE THE PUNISHMENT OF DISMISSA
AWARDED BY DPO BANNU VIDE HIS OFFICE OB NO. 83, DATED 14/02/2023

Respected Sir,

With due respect it is submitted:

- 1 That the appellant had joined the police force as constable in the year 2006 and absorbed as PASI in the year 2016 against the Shuhhadas quota.
- 2 That the appellant has passed basic Elite Course, Traffic course, 8 promotional courses and earned 17 CC-III and 02 CC-II in recognition of his good performance. During the entire service, the appellant has not given an iota of chance of complaint to his high ups but unfortunately, the appellant was served with charge sheet vide DPO Office endst No. 445/SRC, dated 22/11/2022, wherein, the so-called charges of contacts with notorious person (Sakhat) coupled with leaking out information to him about the movement of arresting party to avoid his arrest as well as conveying pictures of police officials were leveled.
- 3 That during the inquiry proceedings, the appellant rebutted each and every charges on plausible grounds but inquiry officer based his findings only on collection of CDR of (Sakhat) and on the basis of that findings, competent authority (DPO Bannu) awarded me the impugned punishment which is discriminatory, against law as well as injustice on the grounds:

GROUNDS:

- 1 That the appellant has remained Incharge DSB and the job of intelligent officer is to collect information from whatever source may be, deemed appropriate to protect the interest of state as well as department. The appellant had explained this fact in his reply to the charge sheet too duly testified by SHO PS Township in his statement, recorded by Enquiry Officer. It was the outcome of information (collected by the appellant as a result of the said contacts) which made ensured the successful action on dated 12/10/2023. If these contacts were not utilized, the nabbing of accused (notorious person Sakhat) could not be ensured. The purpose /intent of the appellant behind the call contacts with the accused Sakhat was not to protect him but to was trace his whereabouts as well as arrest him. The appellant could explain in personal hearing (in one to one) that who were trying to protect him as well as paving way for his release even after his arrest.
- 2 That the report of CDR is limited only to show the time, date and period of dialed, missed and received calls and could not certify the nature of conversation and

ATTESTED

(17)

messages etc that whether it were made for the interest of department or favoured the accused person. In the case of the appellant, star witness, SHO PS Township, has affirmed the facts that the appellant had provided valuable information regarding the arrest of notorious person Sakhat which is sufficient to negate the negative aspects of his contacts with the above accused.

- 3 That it was the fundamental right of the appellant to cross examine the person (evidence) who had provided the Call Data Record to Enquiry Officer but this opportunity was not provided, hence the call data record could not be held a gospel truth.
- 4 That the appellant has been discriminated because number of police officers/officials contacts were identified with accused Sakhat after taking into custody his mobile phone followed by examining his CDR but only the appellant was made a scapegoat and the others were either absolved from the charges or awarded only minor punishments despite the fact that the appellant contacts with the accused were only for the purpose of his arrest but sorry to say that the good performance of the appellant was rewarded in shape of dismissal.
- 5 That the appellant was required to give an opportunity of showing cause of the proposed action which was to be taken by the competent authority but this opportunity was not afforded to the appellant which is mandatory under police rules and other laid down rules Thus, the appellant was condemned as unheard by violating the due process of law at every stage of the inquiry proceedings.
- 6 That the appellant and his family members have given matchless sacrifices for the department/state by offering precious lives in shape of Shahadat. A person with a prudent mind could not expect of such act from a police officer whose family members have given shahdaths for saving the image of the force. Thus, the appellant having such family background even could not think about saving the skin of such like notorious accused.

In view of the above, it is humbly requested that the impugned order of dismissal may kindly be set aside and the appellant may be reinstated in service with all back benefits for the best interest of justice.

50/22
3-23

Hoping our kind boss will act with kindness.

DPO Bannu
on comments also
submit his service
Record and enquiry
file.

Appellant
Arshad Khan
3-3-2023
Ex-Assistant Sub Inspector, Bannu.

R.P.O Bannu Region
313123

ATTESTED

To: The Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.

Below copy (16)

Subject: DEPARTMENTAL APPEAL FOR SETTING ASIDE THE PUNISHMENT OF DISMISSAL AWARDED BY DPO BANU VIDE HIS OFFICE OB NO. 83 DATED 14.02.2023

Respected Sir,

With due respect it is submitted:

1. That the appelland has joined the police department as constable in the year 2006 and absorbed as PASI in the year 2016 against the Shuhadas Quota.
2. That the appelland has passed Basic Elite Course, Traffic course, 08 promotional courses and earned 17 CC-III and 02 CC-II in recognition of his good performance. During the entire service, the appelland has not given an iota of chance of complaint to his high-ups but unfortunately, the appelland was served with charge sheet vide DPO Office Endst; No. 445/SRC, dated 22.11.2022, wherein, the so-called charges of contacts with notorious person (Sakhat) coupled with leaking out information to his about the movement of arresting party to avoid his arrest as well as conveying pictures of police officials were leveled.
3. That during the inquiry proceeding, the appelland rebutted each and every charges on plausible grounds but inquiry officer based his findings only on collection of CDR of (Sakhat) and on the basis of that findings, competent authority (DPO Bannu) awarded me the impugned punishment which is discriminatory, against law as well as injustice on the grounds:

GROUND:

- i. That the appelland has remained Incharge DSB and the job of intelligent officer is to collect information from whatever source may be, deemed appropriate to protect the interest of state as well as department. The appelland has explained this fact in his reply to the charge sheet too duly testified by SHO PS Township in his statement, recorded by Enquiry Officer. It was the outcome of information (collected by the appelland as a result o the said contacts) which made ensured the successful action on dated 12.10.2023. If these contacts were not utilized, the nabbing of accused (notorious person Sakhat) could not be ensured. The purpose / intent of the appelland behind the call contacts with the accused Sakhat was not to protect him but to was trace his whereabouts as well as arrest him. The appelland could explain in personal hearing (in one to one) that who were trying to protect him as well as paving way for release even his arrest.
- ii. That the report of CDR is limited only to show the time, date and period of dialed, missed and received call and could not certify the nature of conversation and message etc that whether it were made for the interest of department of favoured the accused person. In the case of the appelland, Star witness, SHO PS Township, has affirmed the facts that the appelland has provided valuable information regarding the arrest of notorious person Sakhat which is sufficient to negate the negative aspects of his contacts with the above accused.
- iii. That it was the fundamental right of the appelland to cross examine the person (evidence) who had provided the Call Data Record to Enquiry Officer but this opportunity was not provided, hence the call data record could not be held a gospel truth.

ATTESTED

- iv. That the appellant has been discriminated because number of police officers /officials contacts were indentified with accused Sakhat after taking into custody his mobile phone followed by examining his CDR but only the appellant was made a scapegoat and the others were either absolved from the charges or awarded only minor punishment despite the fact that the appellant contacts with the accused were only for the purpose of his arrest but sorry to say that the good performance of the appellant was rewarded in shape of dismissal.
- v. That the appellant was required to give an opportunity of showing cause of the proposed action which was to be taken by the competent authority but this opportunity was not afforded to the appellant which is mandatory under police rules and other laid down rules. Thus, the appellant was condemned as unheard by violating the due process of law at every stage of the inquiry proceedings.
- vi. That the appellant and his family members have given matchless sacrifices for the department/state by offering precious lives in shape of Shahadat. A person with a prudent mind could not expect of such act from a police officer whose family members have given shahdaths for saving the image of the department. Thus, the appellant having such family background even could not think about saving the skin of suchlike notorious accused.

In view of the above, it is humbly requested that the impugned order of dismissal may kindly be set-aside and the appellant may be reinstated in service with all back benefits for the best interest of justice.

Hoping our kind boss will act with kindness.

Appellant

Arshad Khan
Ex-Assistant Sub Inspector, Bannu.

ATTESTED

ORDER:

This order will dispose of departmental appeal, preferred by Ex-PASI Arshad Khan of District Bannu, wherein he has prayed for setting aside the order of major punishment of "Dismissal from service", imposed upon him by DPO Bannu vide OB No.183 dated 14.02.2023 for committing the following misconduct:-

- That as per technical analysis of cell phone recovered from notorious car lifter Sakhat, it was found that the appellant was in contact with the said accused.
- The appellant send pictures of Police officials to the accused whom were tasked to trace Sakhat. Beside during all time when teams were after the arrest of Sakhat, the appellant leaked official information to the accused to avoid his arrest.

Comments, service record, punishment order and enquiry file were received from DPO Bannu vide his office letter No.1176 dated 08.03.2023 and perused in detail. As per enquiry file; the appellant was charge sheeted based upon statement of allegations and Add:SP Bannu was appointed as Enquiry Officer. The E.O conducted inquiry into the allegations and submitted his findings, wherein the E.O concluded that the allegations leveled against the appellant have been proved in toto with undeniable and irrefutable scientific evidences. Therefore, the appellant was recommended by the E.O for award of major punishment. The competent authority (DPO Bannu) with the recommendation of the E.O awarded the appellant major punishment of "Dismissal from Service" vide OB No.183, dated 14.02.2023.

The appellant was heard in person in orderly room held in RPO Office Bannu on 06.04.2023. His service record, enquiry file and other relevant papers were perused which revealed that the appellant had deep relations with Inter Provincial car lifter Sakhim Ullah alias Sakht s/o Zahir Khan r/o Kam Tarkhoba Asperka PS Domel, Bannu evident from his cell phone record. The said car lifter was wanted to local police in 16 cases of car lifting while he was also a proclaimed offender of Punjab Province, Islamabad and Peshawar. He was heading an Inter-Provincial Car Lifting Gang and had neutralized 03 police stations of Bannu and a large number of police officials to make a safe heaven for him in Domel, District Bannu. The delinquent official not only passed information about activities of the team constituted to apprehend Sakhim Ullah alias Sakht but also shared their photos with him. All these were recovered from the cell phone of Sakhim Ullah alias Sakht after he was neutralized in a police encounter on 12.10.2022. The conduct of the delinquent official has not only weakened the police efforts to nab a hardened criminal but also endangered lives of the members of the police team by sharing their photos with the gang leader of the car lifters. This act is not only against the purpose of police but also ignoble.

Therefore, I, Syed Ashfaq Anwar, PSP, Regional Police Officer, Bannu Region Bannu, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules, 1975 (amended in 2014) hereby reject his appeal and endorse the punishment awarded to him by DPO Bannu vide OB No. 183 dated 14.02.2023.

ORDER ANNOUNCED

OB No. 75
Dated: 12/04/2023.

ATTESTED

Regional Police Officer,
Bannu Region,
Bannu

39

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No. 1142 /EC, dated Bannu the 12/04/2023

Cc:

DPO-Bannu for necessary action w/r to his office letter No. cited above. Complete Service Roll and enquiry file of Ex-PASI Arshad Khan of District Bannu are sent herewith for record in your office which may be acknowledged, please

~~Regional Police Officer,
Bannu Region,
Bannu~~

~~ATTESTED~~

40

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Appeal No. 1056/23

Arshad Khan (Ex. PASI)

(Appellant)

VERSUS

IGP etc.

(Respondents)

SCANNED
KPST
Peshawar

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DEPONENT

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**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.**

Appeal No. 1056/23

Arshad Khan (Ex. PASI)

(Appellant)

VERSUS

IGP etc.

(Respondents)

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 to 3

Respectfully Sheweth

The respondents respectfully submit as under: -

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1056 7525

Dated 14/09/23

PRELIMINARY OBJECTIONS.

1. That the Appellant has got no cause of action.
2. That the Appeal is not maintainable under the law.
3. That the Appeal is barred by law & limitation.
4. That the Appellant has not been discriminated in any way.
5. That the Appeal is bad due to mis-joinder and non-joinder of necessary parties.
6. That the Appellant has approached the Honorable Tribunal with unclean hands.
7. That the Appellant has got no cause of action and locus-standi to file the instant Appeal.
8. That the Appellant has been estopped by his own conduct.

BRIEF FACTS:

1. Pertains to record.
2. Pertains to record.
3. Incorrect, when it was established that the appellant had secret relations with notorious car lifter (Sakhat). Proper charge sheet and statement of allegations were served upon the appellant. Departmental enquiry was conducted against the appellant by Addl. SP Bannu. The Enquiry Officer conducted impartial Enquiry. The allegations leveled against the appellant were based on Forensic Science and are undeniable. After the technical analysis of cell phone recovered from the notorious car lifter (Sakhat), it revealed that the appellant had contacted him (17) times on audio call and (sakhat) (9) times vice versa during the last three days before the death of Sakhat. Moreover, The appellant has sent photos and videos of Police Officials, who were tasked to trace him. (Enquiry is annexed as Annexure A)
4. Incorrect, Charge Sheet and statement of allegations were duly served upon the appellant. The appellant reply was found un-satisfactory to the charge sheet. Thus, impugned order dated 14.02.2023 was issued by W/ DPO Bannu. (Charge sheet+ Statement of allegation is duly annexed).
5. Incorrect, being a member of a discipline Force such acts are not tolerable by discipline Force. Thus, the impugned order dated 14.02.2023 was issued and his appeal was rejected being devoid of merits.

ON GROUNDS:

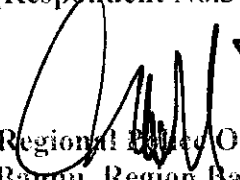
- A. Incorrect, the impugned orders dated 14.02.2023 and 12.04.2023 are according to law, facts, norms and principle of Justice.
- B. Incorrect, the enquiry report, charge sheet and statement of allegation were served upon the appellant. Moreover, he was heard in person on 13.02.2023 but he failed to rebut the allegations.
- C. Incorrect, proper departmental Enquiry was conducted all relevant documents were placed before him by enquiry Officer but he badly failed to rebut the allegations.
- D. Incorrect, the impugned order and rejection of his appeal was quite legal and was issued according to law and rules after thorough probe.

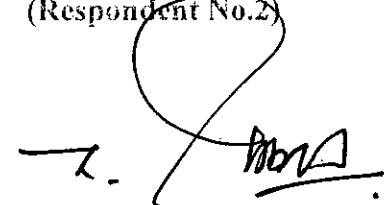
- 42
- E. Incorrect, departmental proceedings were unbiased and the appellant was given every opportunity to prove his innocence but failed to do so.
- F. Incorrect, every opportunity of self defense was given to the appellant but he cannot prove his innocence. Furthermore, he was heard in person in Orderly Room held in W/RPO Bannu dated on 06.04.2023.
- G. The answer to this para is given in above para No.F
- H. Incorrect, every opportunity was given to the appellant. When the notorious car lifter was neutralized during encounter vide FIR NO. 806 dated 12.10.2022, a cell phone was recovered from his possession. The mobile phone was sent to lab for technical analysis and Inter Alia found that the appellant was in contact with him and also sent pictures of Police Officials to him, who were tasked to trace Sakhat and also leaked official information to him to escape from lawful arrest. Such acts of appellant are against service discipline and amounts to gross misconduct in official duty.
Moreover, during enquiry proceedings he was heard in length.
- I. Incorrect, the impugned orders are in accordance with law/ rules and policy.
- J. Incorrect, proper departmental enquiry was conducted and all the charges leveled against the appellant were proved. (Copy of CDR + video Call photos are annexed).
- K. Incorrect, the report of CDR is not limited. The appellant had contacted the notorious (Sakhat) 17 times during the last three days before his death.
- L. Incorrect, every opportunity of cross examination and documents of enquiry were duly examined by the appellant.
- M. Incorrect. nothing was done unfair to the appellant. He was dealt in accordance with law /rules and policy.
- N. Incorrect, proper charge sheet and statement of allegations were issued but his reply was found unsatisfactory. Every opportunity was provided to him during the course of departmental enquiry.
- O. The answer of this para is given in above para No. N.
- P. As replied in above paras.
- Q. As replied in above paras.
- R. The Respondent Department may kindly be allowed to raise additional Grounds at the time of arguments.

PRAYER:

In view of the above Para wise comments, it is most humbly prayed that the Appeal of the Appellant may kindly be dismissed with cost.


District Police Officer
Bannu
(Respondent No.3)


Regional Police Officer
Bannu, Region Bannu
(Respondent No.2)


Provincial Police Officer
KP, Peshawar.
(Respondent No.1)

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.**

Appeal No. 1056/56

Arshad Khan (Ex. PASI)

(Appellant)

VERSUS

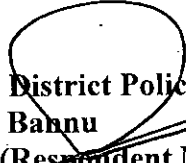
IGP etc.

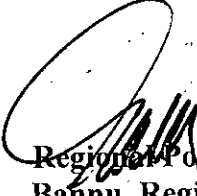
(Respondents)

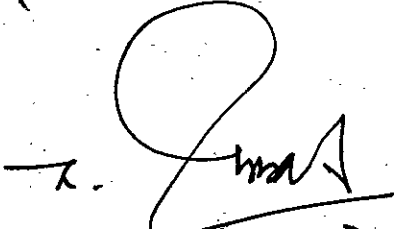
AUTHORITY LETTER.

Mr. Muhammad Farooq Khan DSP Legal Bannu, is hereby authorized to appear before Honorable Tribunal on behalf of the undersigned in the above cited Appeal.

He is authorized to submit and sign all documents pertaining to the present Appeal.


**District Police Officer
Bannu
(Respondent No.3)**


**Regional Police Officer
Bannu, Region Bannu
(Respondent No.2)**


**Provincial Police Officer
KP, Peshawar.
(Respondent No.1)**

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**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.**

Appeal No. 1056/23

Arshad Khan (Ex. PASI)

(Appellant)

VERSUS

IGP etc.

(Respondents)

AFFIDAVIT.

I MR. Muhammad Farooq Khan DSP Legal Bannu, representative for Respondent Nos.1 to 3 , do hereby solemnly affirm and declare that the contents of the accompanying comments submitted by us are true and correct to the best of our knowledge and belief and that nothing has been concealed from this Honorable Tribunal.


DEPONENT

بعدالت

KP Sarda Riboul, Peshawar

2ء منجانب

Arshad Khan

بنام

us

Police Deptt

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام مبارک کیلئے مسدود مقرر عملی بخاری سے پہلے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

20ء

ماہ

المرقوم

العبد د گ واہ العبد